

REMARKS

ALLOWABLE SUBJECT MATTER

Applicant acknowledges the Examiner's determination that claims 13 and 15, if combined into a single claim, would be allowable.

CLAIM REJECTIONS - 35 U.S.C. § 103

Claims 1, 2, and 16

Claims 1, 2, and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. US 2003/0058894 attributed to Feuerstraeter et al. (*Feuerstraeter*) in view of "Comparison of Rate Control Methods," by Howard Frazier (*Frazier*). Claims 1, 2, and 16 have been canceled. Therefore, the rejection of these claims is moot.

Claims 3-12, 17-19, and 21-25

Claims 3-12, 17-19, and 21-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Feuerstraeter* and *Frazier* and further in view of U.S. Patent No. 6,169,729 issued to Feuerstraeter (*Feuerstraeter 2*). Claims 3-12, 17-19, and 21-25 have been canceled. Therefore, the rejection of these claims is moot.

Claims 13-15, 20, and 26-29

Claims 13-15, 20, and 26-29 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Feuerstraeter* and *Feuerstraeter 2* and further in view of U.S. Patent Publication No. US 2003/0039211 attributed to Hvostov et al. (*Hvostov*), "802.3as 5 Criteria" and "XAUI/XGXS Proposal" presented at IEEE 802.3 10Gb/s Take Force May 2000 Interim Meeting Plenary Week, July 11-12, 2000. Claims 13-15, 20, and 26-29 have been canceled. Therefore, the rejection of these claims is moot.

New Claims

Claims 30-47 have been added. Applicant respectfully submits that the cited references above fail to teach, separately or in combination, at least one limitation from each of the independent claims, 30, 40, and 44, respectively.

Independent claim 30 recites, in part, the following:

dynamically aggregating, if necessary, multiple media access controllers (MACs), based, at least in part, on the identified communication capability of the remote device, to establish a virtual data sub-channel within a physical data channel for communication between a communication interface and the remote device;

determining whether a data rate of the virtual sub-channel is compatible with the communication capability of the remote device; and

reducing the data rate of the virtual sub-channel if the data rate is not compatible with the communication capability of the remote device.

Thus, Applicant claims a method of dynamically aggregating, if necessary, multiple media access controllers (MACs), based, at least in part, on the identified communication capability of the remote device, to establish a virtual data sub-channel within a physical data channel.

Independent claims 40 and 44 recite similar limitations.

Feuerstraeter discusses an apparatus and method for automatically detecting the port type of a remote device. *Frazier* is a presentation for rate control options by the IEEE P802.3ae Task Force. *Feuerstraeter 2* discusses a 200Mbps PHY/MAC combination for providing duplex operation at 400 Mbps. *Hvostov* discusses allocating bandwidth based on requested access time by different optical network units. Applicant submits that none of the above references teach or disclose, separately or in combination, dynamically aggregating, if necessary, multiple media access controllers (MACs), based, at least in part, on the identified communication capability of the remote device, to establish a virtual data sub-channel within a physical data channel.

Therefore, Applicant submits claims 30, 40, and 44 are patentable in view of the cited references.

Claims 31-39 depend from claim 30. Claims 41-43 depend from claim 40. Claims 45-47 depend from claim 44. Given that dependent claims necessarily include the limitations of the claims from which they depend, Applicant respectfully submits claims 31-39, 41-43, and 45-47 are patentable in view of the above-cited references.

CONCLUSION

In view of the amendments and remarks set forth above, Applicants submit that claims 30-47 are in condition for allowance and such action is respectfully solicited. The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.

Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
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